



LEGAL CONSIDERATIONS FOR HANDLING ALCOHOL- RELATED INCIDENTS

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ALCOHOL-RELATED INCIDENT

- Any incident in which the use of alcohol was a contributing factor (MARADMIN 316/01)
 - Driving Under the Influence (Art. 111, UCMJ)
 - Drunk on Duty (Art. 112, UCMJ)
 - Art. 134, UCMJ Offenses
 - Drunk and Disorderly Conduct
 - Incapacitation for Performance of Duties due to Intoxication



ALCOHOL-RELATED INCIDENT

- Other offenses in which the use of alcohol is commonly a contributing factor:
 - Assault (Art. 128, UCMJ)
 - Rape or Sexual Assault (Art. 120, UCMJ)
 - Wrongful Use of a Controlled Substance (Art. 112a, UCMJ)
 - Conduct Unbecoming an Officer (Art. 133, UCMJ)
 - Communicating a Threat (Art. 134, UCMJ)



COMMANDER'S LEGAL OPTIONS

- No Action
- Non-punitive Measures
 - Non-punitive Letter of Caution
 - Administrative Counseling
- Administrative Action
 - Non-judicial Punishment
 - Involuntary Administrative Separation
- Court-Martial Action
 - Summary Court-Martial
 - Special Court-Martial
 - General Court-Martial



NON-PUNITIVE MEASURES

- Types
 - Non-punitive Letter of Caution (Sec. 0105 JAGMAN)
 - Does not become a part of OMPF.
 - Administrative Counseling (Sec. 6105 MARCORSEPMAN)
 - Purpose is for rehabilitation and counseling.
 - Recorded in Service Record Book



ADMINISTRATIVE ACTION

- Non-judicial Punishment (Part. V, MCM)
 - Standard of Proof is “Preponderance of the Evidence.”
 - A Marine must be given an opportunity to refuse NJP, except if embarked on a vessel.
 - Maximum punishment determined by rank of accused and rank of officer imposing NJP.
 - Maximum on officers: Arrest in quarters for 30 days; 60 days restriction; and forfeiture of one-half pay per month for two months.
 - Maximum on enlisted: 60 days restriction, forfeiture of one-half pay per month for two months; and reduction of one enlisted rank.



ADMINISTRATIVE ACTION

- Involuntary Administrative Separation
 - Primary References
 - Officers: SECNAVINST 1920.6C
 - Enlisted: MARCORSEPMAN (MCO P1900.16F)
 - Typical Bases for Alcohol Related Incidents
 - Alcohol Rehabilitation Failure (Hon or Gen characterization of service)
 - Misconduct (Hon, Gen or OTH characterization of service)
 - Pattern of Misconduct
 - Commission of a Serious Offense
 - Civilian Conviction



ADMINISTRATIVE ACTION

- Involuntary Administrative Separation
 - Rights of a Respondent
 - If an OTH is sought, then the respondent has a right to an administrative separation board.
 - If the respondent requests a board, then he/she has the right to be represented by a judge advocate.



ADMINISTRATIVE ACTION

- **Involuntary Administrative Separation**

- The first GCMCA is the separation authority for enlisted Marines, unless:
 - Marine > 18 years service (DC, M&RA is the separation authority)
 - Sole basis for separation was also a charge at a SPCM or GCM, where the court did not adjudge a punitive discharge, and the command seeks an OTH (DC, M&RA is the separation authority)
 - First GCMCA if command only seeks an HON or GEN
 - Board substantiated the misconduct, but recommended retention and the command still seeks separation (ASN, M&RA is the separation authority)
 - Only Hon or Gen characterization of service authorized.
 - Board did not substantiate the misconduct and the command still seeks separation (ASN, M&RA is the separation authority)
 - Only Hon or Gen characterization of service authorized.
 - Command must demonstrate that the findings of the board were “clearly contrary to the substantial weight of the evidence in the record.”



ADMINISTRATIVE ACTION

- **Involuntary Separation**

- Officers

- ASN, M&RA is the separation authority for Officers.

- Probationary Officers

- Less than 6 years of commissioned service.
 - Can be separated via notification procedures
 - » Only Hon or Gen characterization of service authorized.
 - Can receive an OTH if permitted a BOI or BOI waived.

- Non-Probationary Officers

- 6 or more years of commissioned service.
 - Board of Inquiry (BOI) required unless waived.
 - Can receive an Hon, Gen or OTH characterization of service depending on the recommendation of the BOI or if BOI waived.



COURT-MARTIAL ACTION

- **Summary Court-Martial**
 - **Composed of one commissioned officer**
 - **Burden of Proof is “beyond a reasonable doubt.”**
 - **Not authorized for Officers**
 - **Maximum Punishment**
 - If E-4 or below: 30 days confinement; forfeiture of two-thirds pay for one month; and reduction to lowest pay grade
 - If E-5 or above: Restriction for 60 days; forfeiture of two-thirds pay for one month; and reduction one pay grade.
 - **Result reviewed by a judge advocate for legal sufficiency**



COURT-MARTIAL ACTION

- **Special Court-Martial**
 - **Composed of a military judge and/or military members**
 - **Burden of Proof is “beyond a reasonable doubt.”**
 - **Accused represented by a defense counsel**
 - **Maximum Punishment:**
 - 12 months confinement
 - Forfeiture of two-thirds pay per month for 12 months
 - Reduction to lowest pay grade
 - Bad Conduct Discharge



COURT-MARTIAL ACTION

- **General Court-Martial**
 - **Composed of a military judge and/or military members**
 - **Burden of Proof is “beyond a reasonable doubt.”**
 - **Art. 32 Hearing (unless waived by the accused) required prior to Referral**
 - **Accused represented by a defense counsel**
 - **Maximum Punishment:**
 - Maximum allowable for the Offense by the UCMJ



EXERCISING JURISDICTION

- Cases Tried in State or Foreign Courts:
JAGMAN Sec. 0124
 - Commanders may dispose of an offense in any manner desired prior to civilian or foreign adjudication (NJP or court-martial).
 - After civilian or foreign adjudication, if charges are not already referred to court-martial - must get permission of a GCMCA to proceed to NJP or court-martial for the same offense.
 - Criteria for GCMCA to use in making decision:
 - Civilian proceedings concluded without conviction for any reason other than acquittal (Example - Judge dismisses charges); and/or
 - The interests of justice and discipline are considered to require further action under the UCMJ.



PRETRIAL RESTRAINT

- Marines can only be assigned to liberty risk while deployed outside of U.S. or Territories, otherwise it is pretrial restriction that starts the speedy trial clock or illegal punishment in violation of Art. 13, UCMJ and Sec. 0104, JAGMAN



QUESTIONS ?



BACK UP SLIDES



EXERCISING COURT-MARTIAL JURISDICTION

- Cases Tried in Foreign Court
 - Options limited by Status of Forces Agreement (SOFA), if one exists (JAGMAN Sec. 1008):
 - If there is a SOFA, Foreign Authorities have primary jurisdiction (right of first refusal), **except:**
 - **Offenses committed during official duty;**
 - **Offenses committed against the property or security of the Sending State;**
 - **Offenses solely against the person or property of another member of the force, civilian component or a dependent of the Sending State; or**
 - **Offenses not punishable by law of the Receiving State.**



EXERCISING COURT-MARTIAL JURISDICTION

- **Cases Tried in Federal Court**
 - Constitutional Double Jeopardy prohibition applies for offenses tried at court-martial (5th Amendment, U.S. Constitution)
 - Federal Prosecution subsequent to NJP is not a Double Jeopardy violation.
 - NJP is administrative in nature.
 - The NJP would be a matter for consideration during sentencing by the judge.
 - A recent opinion by a Magistrate Judge in the Eastern District of Virginia indicated that a defense counsel must have notified the client of the possibility of prosecution for the same offense in Federal Court prior to acceptance of NJP.